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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,769	12/22/2000	Charles L. Dunn	12310-002001	7876

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KIRKPATRICK & LOCKHART LLP
75 STATE STREET
BOSTON, MA 02109-1808

EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,769

Applicant(s)

DUNN ET AL.

Examiner

Donald L. Champagne

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed with an amendment on 20 September 2004 have been fully considered but they are moot in view of the following new basis of rejection.

Claim Rejections - 35 USC § 102 and 35 USC § 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 9, 12-14, 16-23, 26, 29-31 and 33-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Shell (US006134533A).
5. Shell teaches (independent claims 1, 18 and 35) a method, system and machine-readable medium which stores a method, the method comprising: determining if a third party (*level 2 seller*, col. 1 lines 25-39) referred an online buyer of a software product deliverable online (col. 2 lines 24-26), which reads on a good not requiring physical delivery, to an online seller (*level 1 seller*) of the good, and *calculating commissions using a multi-level marketing structure* (col. 2 lines 8-9), which reads on apportioning revenue from sale of the good between the *level 1 seller*/online seller and the *level 2 seller*/third party.

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6. Shell also teaches at the citations given above claims: 5 and 22; 12 and 29; 13 and 30; 16 and 33; and 17 and 34.
7. Shell also teaches claims 2, 3, 19, 20 and 37 (col. 7 lines 2-6); claims 4 and 21; claims 6, 23 and 36 (col. 4 lines 38-39); claims 9 and 26 (col. 1 line 67); and claims 14 and 31 (col. 2 lines 26-28).
8. Shell also teaches claims 38 and 39, at the citations given above, and where *Uploading a Product to the Sales Support Server* (col. 2 line 65 to col. 3 line 57) reads on registering an online seller of a good (the *product developer*) with an entity (the *Sales Support Server*).
9. Claims 10, 11, 27 and 28 are rejected under 35 U.S.C. 103(a) as being obvious over Shell.
10. Shell does not teach (claims 10 and 27) that the good includes a subscription to a website. Shell teaches that the good is software (col. 2 lines 24-26). Because it would facilitate updates of said software product, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Shell that the good includes a subscription to a website.
11. Shell does not teach (claims 11 and 28) that the good includes a subscription to a website. Shell teaches that the good is software (col. 2 lines 24-26). Because it would facilitate updates of said software product, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Shell that the good includes a subscription to a website.
12. Claims 7, 8, 15, 24, 25 and 32 are rejected under 35 U.S.C. 103(a) as being obvious over Shell (US006134533A, hereafter the Shell '533 patent) in view of Shell (US 20010011236A1, hereafter the Shell '236 published application). Shell '533 patent does not teach that revenue is apportioned in accordance with predetermined percentages. Shell '236 published application teaches that revenue is apportioned in accordance with predetermined percentages (claim 8.b)). Because percentages are a common means for specifying commissions, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Shell '236 published application to those of Shell '533 patent.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
14. The examiner's supervisor, Eric Stamber can be reached on 703-305-8469.¹ The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
16. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

DONALD L. CHAMPAGNE
PRIMARY EXAMINER



Donald L. Champagne
Primary Examiner
Art Unit 3622

27 January 2005

¹ 571-272-6724 after the middle of April 2005.